

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 19, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Ref. No.: GLS-4858

**HAWAII**

Amendment to Grant of Easement No. S-4858 to Joseph F. Pickering and Helen D. Pickering for Vehicular and Pedestrian Ingress and Egress Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-9-02: 9.

**APPLICANT:**

Joseph F. Pickering and Helen D. Pickering, Kamuela, HI 96743.

**LEGAL REFERENCE:**

Section 171-13, Hawaii Revised Statutes, as amended.

**LOCATION:**

Government Lands of Puako at Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-9-02: 9, as shown on the attached map labeled **Exhibit A**.

**AREA:**

To be determined by independent survey, subject to review and verification by the Department of Accounting and General Services, Survey Division.

Existing easement is approximately 1,381 square feet.

**ZONING:**

State Land Use District: Urban  
County of Hawaii CZO: Open; also within SMA

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_ NO X

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-4350 to the Hoku Loa Church Foundation, and partially encumbered by existing GL S-4858, which is a term easement for vehicular and pedestrian ingress and egress.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for vehicular and pedestrian ingress and egress purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicants are natural persons and not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey map and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine consideration required for increased area to existing easement.

BACKGROUND:

This submittal relates to an access easement over State land at Puako, Lalamilo, South Kohala, which is the site of the historic Hokuloa Church and designated as TMK: 3<sup>rd</sup>/ 6-9-02: 9 (the "church lot"). The church lot is partially encumbered by Revocable Permit No. S-4350 to the Hoku Loa Church Foundation (HLCF). On the makai side of the

church lot is a landlocked shorefront parcel designated as TMK: 3<sup>rd</sup>/ 6-9-02: 11 (the "Pickering lot"), presently owned by the Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and the Helen D. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994. **(Exhibit A)**

It appears that historically, access to the Pickering lot was over the church lot. In the 1960s, when HLCF sought approval of the Land Board to restore the church, an informal agreement was reached between the State and the then-owner of the Pickering lot, Richard Smart, that access to the Pickering lot would be relocated outside of the church lot. The new access would traverse the State lands designated as TMK: 3<sup>rd</sup>/ 6-9-02: 11 located on the west side of the church lot.

It is not clear whether the informal agreement with Richard Smart was ever put into effect. Mr. Smart's successors-in-interest subsequently sought Board approval to access the Pickering lot over the church lot. At its meeting of November 17, 1972, Item F-1-b, the Board approved the issuance of Revocable Permit No. S-4896 to Signal Properties, Inc. for roadway easement for ingress and egress purposes over a 10-foot wide corridor along the eastern edge of the church lot. At its meeting of October 24, 1975, Item F-4, the Land Board approved the cancellation of Revocable Permit No. S-4896 and issued a new revocable permit (RPS-5186) to the successors-in-interest to the property, Elwin Hussey and Shirley Hussey, for roadway easement for ingress and egress purposes over the same 10-foot wide corridor.

The Pickerings acquired title to the Pickering lot in August 1978. In 1980, the Pickerings (in their individual capacities and not as trustees) applied for an access easement to their property from Puako Beach Drive across the church lot. At its meeting of April 10, 1981, Item F-2, the Board approved a 65-year non-exclusive easement for vehicular and pedestrian ingress and egress. The easement corridor ultimately selected runs along the eastern boundary of the church lot but takes a jog to the west near the boundary with the Pickering lot. See Exhibit B attached.

#### REMARKS:

In its effort to list the church site on the National Historical Registry, the successor-in-interest to HLCF, the Hawaii Conference Foundation (HCF), had the church lot surveyed as a requirement of the Registry application. Upon completion of the survey report, it was discovered that the existing traveled way utilized by the Pickerings was not consistent with the easement alignment approved under Grant of Easement No. S-4858. As a result, the Pickerings seek to amend the easement by changing the alignment so it would overlap and/or include the existing traveled way. The Pickerings requested that the easement be at least ten feet wide and preferably 13 feet wide to accommodate emergency and service vehicles.

On March 19, 2009, staff conducted a site inspection of the property. Staff noted that large kiawe trees are growing in a portion of the legal easement corridor, approximately

mid-way between the church lot's northeast and southeast corners. Additionally, the eastern edge of the church lot, which is also the eastern boundary of the legal easement, is located within a few feet of the high water line. The Pickerings state they are worried that the removal of the kiawe trees would destabilize the shoreline in this area. The Pickerings point out that the shoreline is closer to the traveled way than it was in the early 1980s, and believe that it is now important to preserve the tree barrier between the church lot and the ocean.

Staff consulted with the HCF regarding the easement location. HCF recognizes the difficulty of developing the Pickerings' legal easement corridor as granted for travel. Accordingly, HCF proposed an expanded easement route as shown in yellow and blue on **Exhibit B**. In HCF's proposal, the western edge of the easement is moved five feet west (toward the church) at Puako Beach Drive, and then a line is drawn from the point where the new western edge of the easement intersects the road to the existing western edge of the easement where it meets the Pickering lot. This expanded corridor partially overlaps the existing traveled way.

Staff forwarded HCF's proposal to Margaret Wille, the attorney for the Pickerings, who acknowledged acceptance of the proposed realignment for the additional area to the existing easement.

As presently worded, the easement instrument does not allow for any assignment of the rights thereunder without prior Board consent. Staff is recommending an amendment to the easement to allow it to run with the land under the standard conditions approved by the Department of the Attorney General. Those conditions include the requirement that the assignor notify the assignee of the insurance requirement in writing, separate and apart from this easement document. With the "run with the land" provision incorporated into the easement instrument, the Pickerings, as individuals, will be able to assign the easement rights to the lawful owners of the Pickering lot, who are two trusts the Pickerings have created.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.



RECOMMENDATION: That the Board:

- A. Authorize the amendment of Grant of Easement No. S-4858, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  1. The standard terms and conditions of the most current amendment document form, as may be amended from time to time;
  2. Approve a realignment of the easement's west boundary as proposed and

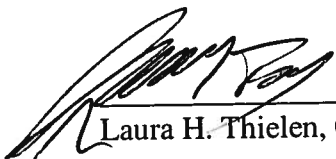

agreed to by both HCF and the Pickerings, as shown in **Exhibit B**;

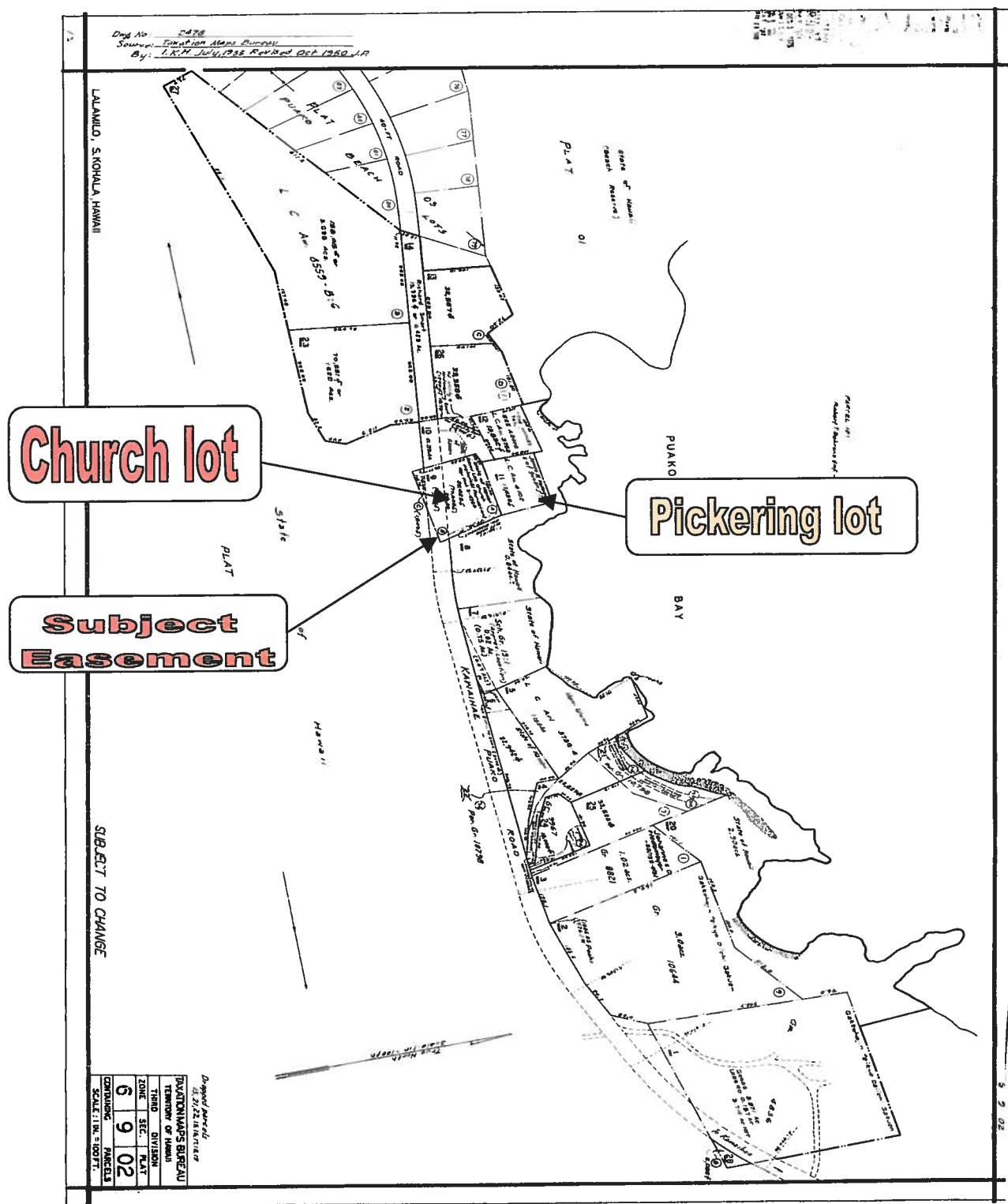
3. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3<sup>rd</sup>/ 6-9-03: 11, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
4. Grantee shall be responsible for all expenses and/or fees (survey, appraisal, document, consideration, etc.) relating to the amendment of Grant of Easement No. S-4858;
5. Grantee shall be reminded that it is solely responsible for the maintenance and repair of the easement area, which includes trimming of the kiawe trees growing within its approved easement area;
6. Review and approval by the Department of the Attorney General; and
7. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

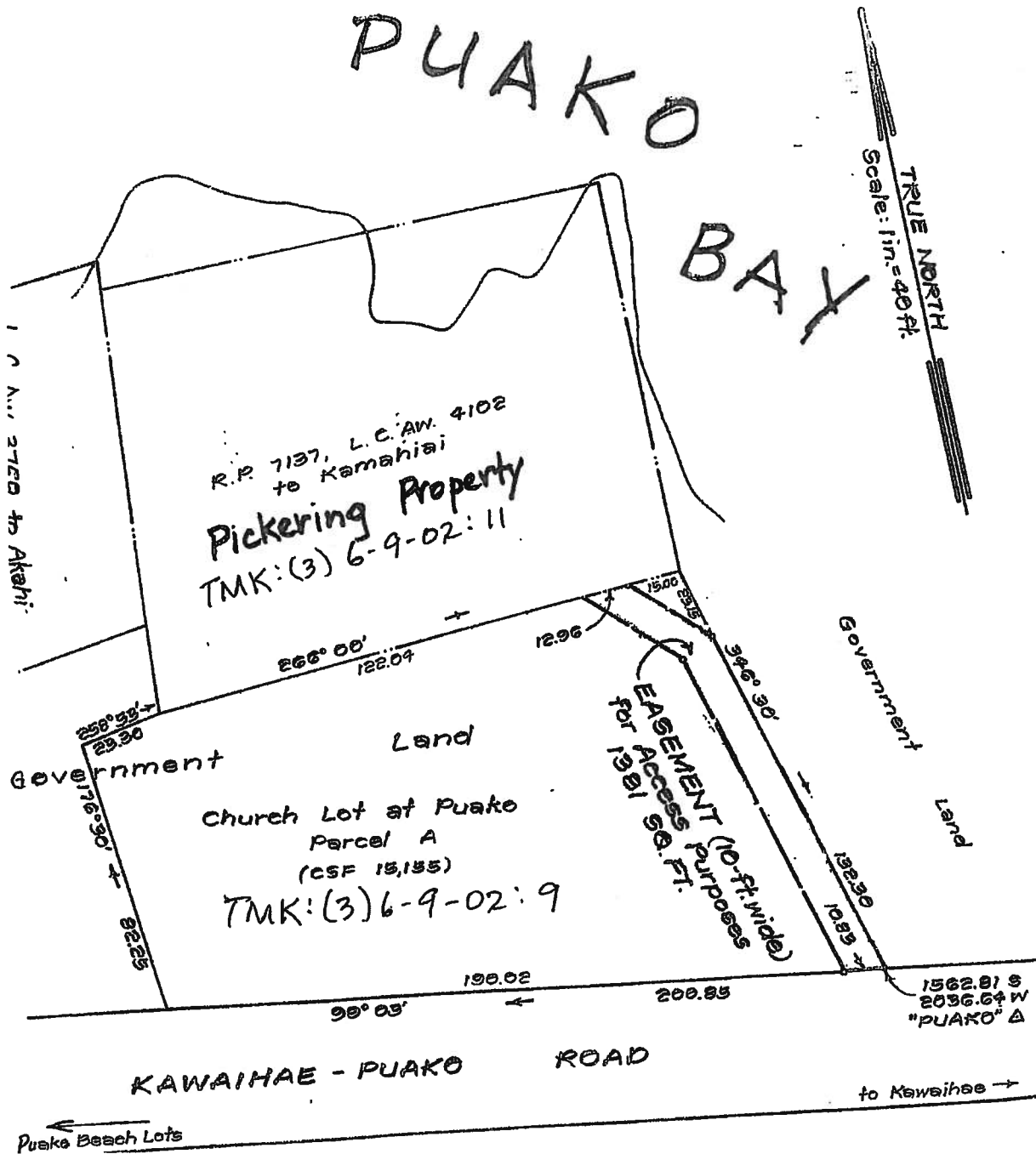
  
\_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent  


APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson  




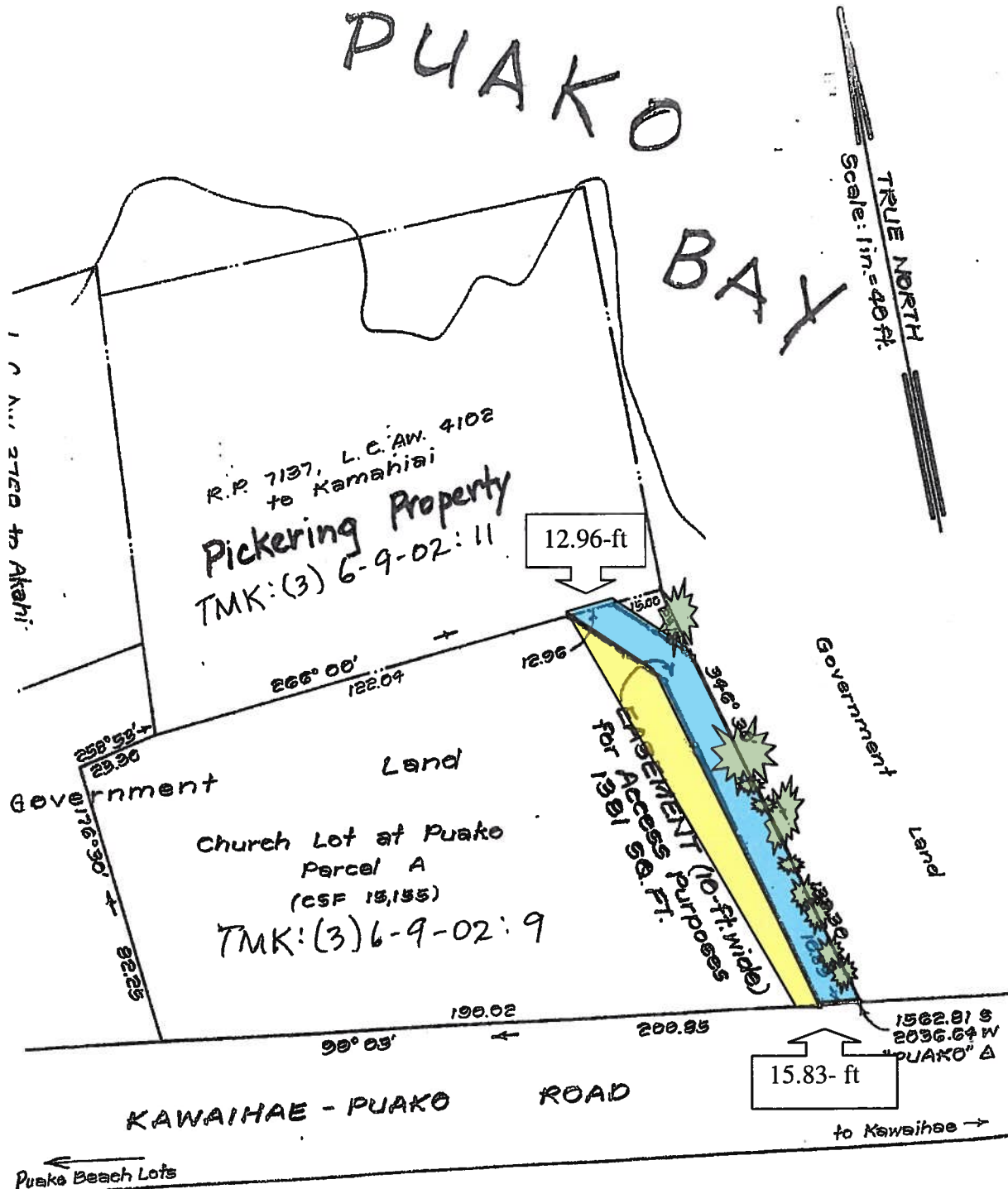
# EXHIBIT A



**EXHIBIT A**

 Existing easement area

 Proposed addition to easement



**EXHIBIT B**